HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

W.P. No.12424 of 1998

Between

Patan Savul Hameed ..Petitioner

AND

The A.P. State Electricity Board represented by its Member Secretary and others ..Respondents

:: JUDGMENT ::

20.4.2007

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.12424 of 1998

The present writ petition has been instituted seeking a declaration that the inaction on the part of the respondents in not considering the candidature of the writ petitioner for appointment as Junior Line Man (Helper) or against any other post in terms of B.P.Ms.No.36 dated 18.5.1997 with reference to age, is illegal. The writ petitioner has asserted that he had been engaged as a Village Electrical Worker for a period of three months as he has been found suitable to such employment by the Divisional Engineer, (Operations) A.P.S.E.B., Nellore, through a Memo dated 13.10.1987. Though he had completed three months tenure and he continued to work as a Village Electrical Worker for more than ten years, his services have not been regularized. The writ petitioner also asserts that pursuant to the policy decision taken by the Board as is evidenced through B.P.Ms.No.36 dated 18.5.1997, his case was not considered in terms thereof for regularization.

Sri Samineni Kishore, learned Standing Counsel for the respondent Board has drawn my attention to the judgment rendered by the Supreme Court in C.A.No.3215 of 2002 wherein a similar question had fallen for consideration and the Supreme Court had answered the issue in the following terms:

> "The limited question which was required to be considered was with regard to the condition laid down in the aforesaid Board Proceedings

which, inter alia, provides that for regularization of service the age of the candidate shall be reckoned as per the Board's service regulations in force at the time of their first engagement and there shall be no relaxation of age.

In view of the aforesaid Board's proceedings as well as the circulars it was incumbent upon the Board to consider the age of the candidate at the time of his first engagement. Admittedly, in the present case all the employees were under age at the relevant time, except two employees who were over age. The Board's regulation provides the age limit as under:

"a) Age: Age shall be reckoned as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of age".

The Board regulation 16(1)(e) provides as under:

"Age" – I) Technical personnel or non-technical personnel who have, on or before the first day of the month in which selection is held, completed 30 or 25 years of age respectively shall not be eligible for direct recruitment. Minors, i.e. candidates who have not completed 18 years of age also shall have not completed 18 years of age also shall not be eligible for direct recruitment".

Despite the fact that on the date of the first engagement the respondent / casual employees/ employees of the contractor/ junior line men were not eligible for appointment on the ground of under ages or over age, the Division Bench of the High Court arrived at the conclusion that there was no violation of the public policy or any irregularity occurred at the time of initial appointment or entry into service, which disentitles the consideration of the appellants for regularization. Secondly, the alleged irregularity in the initial appointment having been waived by the Board it does not confer a right on the Board to

deny the just due to the employees. Thirdly, the violation of a public policy and the irregularity committed has to be judged in the facts and circumstances of each case. No strict proposition as such can be laid down.

In our view, in the petitions before the High Court there was no question of considering public policy and the discussion on the law was totally besides the point involved in the mater. Limited issue was – whether before regularization of service of employees, the Board was bound to follow the eligibility conditions laid down in its proceedings dated 18.5.1997 and 31.12.1997. Benefit of regularization which was conferred on the employees solely depended upon eligibility of conditions including the age limit prescribed under the statutory regulations. The statutory regulations provide that there shall be no relaxation of age.; In cases, where the Board has committed mistake in engaging under age or over age casual employees or has permitted the contractor to do so would not confer any right on such employees for being regularized on the basis of BPMS dated 18.5.1997.

In this view of the matter, the judgment rendered by the High Court cannot be sustained and is, therefore, set aside.

However, considering the fact that the respondents/ casual employees of the contractor/ junior line men are in service for more than 15 years, we do not think that this would be a fit case for disturbing their appointments made in pursuance of the order passed by the High Court."

Thus, it is clear that the Board is required to take into consideration and account the age of the candidate at the time of his first engagement and in fact, the Board has no power of

granting any relaxation in that regard either.

The learned counsel for the writ petitioner has fairly stated that the writ petitioner was less than 18 years of age at the time when he has been initially engaged by the Divisional Engineer (Operations), Nellore and consequently, his case has fallen within the mischief provided in the Regulations dealing with the minimum age requirements. The Board has specifically set out that candidates who have not completed 18 years of age shall not be eligible for direct recruitment at all. Therefore, the question of regularization of the services of the writ petitioner in terms of the policy cannot be ordered.

In this view of the matter, the writ petition deserves to be dismissed and it is accordingly, dismissed, but however, without costs.

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NOOTY RAMA MOHANA RAO.J.

20.4.2007
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